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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,112	06/26/2003	Mathew E. Hoekstra	110466-152110	9254
31817 7590 11/25/2008 SCHWABE, WILLIAMSON & WYATT, P.C. PACWEST CENTER, SUITE 1900 1211 S.W. FIFTH AVE. PORTLAND, OR 97204				
EXAMINER				
FRITZ, BRADFORD F				
ART UNIT		PAPER NUMBER		
2441				
MAIL DATE		DELIVERY MODE		
11/25/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/609,112

**Applicant(s)**

HOEKSTRA ET AL.

**Examiner**

BRADFORD F. FRITZ

**Art Unit**

2441

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 8/18/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4-17, 19-23 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-17, 19-23 and 26-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 8/18/2008 have been fully considered but they are not persuasive.
2. In the remarks, applicant argued in substance that:

(A) Prior art does not teach second requesting, by the client device, the first content from the content provider, the second requesting incorporating a query result for the query, the query result including the dynamic characteristic. Applicant argues that the above limitation is not disclosed by Zmudzinski because the second request is not requesting for the same content as the first request.

As to point (A), In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the second request be for the exact same content as the first request) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The Examiner notes that the claims merely require that the second requesting incorporate the query result somehow, and that the first content comes from the content provider, and that the second receiving merely contains a portion of the first content.

Nevertheless, Zmudzinski disclosed second requesting, by the client device (paragraphs 0025-0026, Fig. 2), the first content from the content provider (paragraphs 0025-0026, Fig. 2 Item 220), the second requesting incorporating a query result for the query, the query result including the dynamic characteristic (paragraphs 0025-0026, Fig. 2). The Examiner notes that the cited paragraphs describe a "browsing device that sends its own profile as well as the profile of the mobile device that is requesting content" or alternatively the server can query for the profiles, in either embodiment the sever will receive the profiles which include dynamic characteristics of the requesting devices (*i.e. installed software, codecs, network connection, or screen resolution etc.*). The server uses the dynamic characteristic(s) to better format the previously requested content according to the dynamic characteristic(s) of the devices (paragraph 0026). Zmudzinski teaches that the content can be links to samples, information about games, applications or other executable content (paragraph 0026). The user can then go on to make future requests and the server will tailor the content in the responses according to the queried dynamic charactersitc(s) of the devices (paragraph 0026). The user could even request (item 220) the exact same content a second time (paragraphs 0025-0026, Fig. 2, item 220), although such a limitation is not positively recited in the claims.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 4-17, 19, 20, 22, 23, 26-28, and 30 are rejected under 35

U.S.C. 102(e) as being anticipated by Zmudzinski et al. (2004/0122949), hereinafter referred to as Zmudzinski.

5. Regarding claims 1 and 26, Zmudzinski disclosed first requesting, by the client device, a first content from a content provider, including providing a characteristic profile to the content provider, the characteristic profile including one or more characteristics of the client device (paragraphs 0033-0036, 0021-0023, and Fig. 2); receiving, by the client device, a first reply from the content provider responsive to the first requesting (paragraphs 0033-0036, 0021-0023, and Fig. 2), the first reply including a query for a dynamic characteristic of the client device (paragraph 0025 and Fig. 2); second requesting, by the client device, the first content from the content provider, the second requesting incorporating a query result for the query, the query result including the dynamic characteristic (paragraphs 0031, 0033-0036, and Fig. 2); and second receiving, by the client device, a second reply from the content provider responsive to the second requesting (paragraphs 0033-0036, 0021-0023, and Fig. 2), the second reply including the first content or portion thereof (paragraphs 0033-0036, 0021-0023, and Fig. 2), wherein the first content or portion thereof is determined by the content provider based at least in part on the dynamic characteristic (paragraphs 0033-0036, 0021-0023, and Fig. 2).

6. Regarding claim 2, Zmudzinski disclosed a third requesting, by the client device, a second content from the content provider, wherein the third requesting automatically incorporates the query result for the query (paragraphs 0033-0036, 0021-0023, and Fig. 2).
7. Regarding claim 4, Zmudzinski disclosed determining if the content provider is caching the query result (paragraphs 0031, 0033-0036, and Fig. 2), and if so, determining, by the client device, if the query result has changed since the first requesting (paragraphs 0031, 0033-0036, and Fig. 2); and wherein if the query result has not changed, said third request does not incorporate the query result for the query (paragraphs 0031, 0033-0036, and Fig. 2).
8. Regarding claim 5, Zmudzinski disclosed wherein if the query result has changed, said third request automatically incorporates the query result for the query (paragraphs 0031, 0033-0036, and Fig. 2).
9. Regarding claim 6, Zmudzinski disclosed determining, by the client device, if the content provider is caching the query result (paragraphs 0031, 0033-0036, and Fig. 2), and if so, determining if the query result has changed since the first requesting (paragraphs 0031, 0033-0036, and Fig. 2); and wherein if the query result has not changed, said third request does not incorporate the query result for the query (paragraphs 0031, 0033-0036, and Fig. 2), and wherein if the query result has changed, said third request automatically incorporates the query result for the query (paragraphs 0031, 0025 and Fig. 2).

10. Regarding claim 7, Zmudzinski disclosed storing, by the client device, the query result in a HyperText Transport Protocol (HTTP) request header provided to the content provider (paragraphs 0021-0023).
11. Regarding claim 8, Zmudzinski disclosed wherein the query is received in a HyperText Transport Protocol (HTTP) response header provided by the content provider (paragraphs 0021-0023).
12. Regarding claim 9, Zmudzinski disclosed wherein requesting the content and receiving the first reply is performed according to the Composite Capability/Preference Profiles (CC/PP) protocol (paragraphs 0021-0023).
13. Regarding claim 10, Zmudzinski disclosed wherein the characteristic profile includes an entry indicating whether the client can be queried for a dynamic characteristic (paragraphs 0021-0023, and 0031).
14. Regarding claim 11, Zmudzinski disclosed wherein the characteristic profile is formatted as a UAProf profile (paragraphs 0021-0023).
15. Regarding claim 12, Zmudzinski disclosed wherein the first reply comprises a selected one of the content or a frame-set for the content (paragraphs 0021-0023).
16. Regarding claims 13 and 20, Zmudzinski disclosed wherein the dynamic characteristic is a selected one of processor type, processor speed, processor mode, available memory, available storage, or available network connectivity (paragraphs 0019-0021).
17. Regarding claim 14, Zmudzinski disclosed wherein the dynamic characteristic is a selected one of availability of: peer clients, a camera, a microphone, a text to speech

converter, a speech to text converter, a soft radio, a graphics processor (paragraphs 0019-0021 and 0031).

18. Regarding claim 15, Zmudzinski disclosed wherein the dynamic characteristic is availability of an encryption processor (paragraphs 0019-0021 and 0031).

19. Regarding claims 16 and 28, Zmudzinski disclosed receiving, by a content provider, from a client a first request for first content and a characteristic profile (paragraphs 0033-0036, 0021-0023, and Fig. 2), the characteristic profile including one or more characteristics of the client (paragraphs 0033-0036, 0021-0023, and Fig. 2); providing, by the content provider, a first response to the request of the client lacking all of the requested first content (paragraphs 0033-0036, 0021-0023, and Fig. 2), but wherein the first response incorporates a query for a dynamic characteristic of the client (paragraph 0025 and Fig. 2); receiving, by the content provider, a second request for the first content, wherein the second request incorporates a query result for the query (paragraphs 0025, 0033-0036 and Fig. 2), the query result including the dynamic characteristic (paragraphs 0031, 0033-0036 and Fig. 2); and providing, by the content provider, the first content to the client in accord with the dynamic characteristic (paragraphs 0033-0036, 0021-0023, and Fig. 2).

20. Regarding claim 17, Zmudzinski disclosed wherein the characteristic profile indicates the client may be queried for characteristics not identified in the characteristic profile (paragraph 0025 and Fig. 2).



21. Regarding claim 19, Zmudzinski disclosed wherein the dynamic characteristic is a real-time attribute which changes while the client is operating (paragraphs 0019-0021 and 0031).

22. Regarding claim 22, Zmudzinski disclosed a content provider communicatively coupled with a client (paragraphs 0033-0036, 0021-0023, and Fig. 2); wherein the content provider is operative to perform receiving from the client a first request for first content and a characteristic profile including characteristics of the first client (paragraphs 0033-0036, 0021-0023, and Fig. 2), determining whether the client may be queried for dynamic characteristics (paragraphs 0033-0036, 0021-0023, and Fig. 2), providing a response to the first request of the client (paragraphs 0033-0036, 0021-0023, and Fig. 2), the response lacking all of the requested first content (paragraphs 0025, 0033-0036 and Fig. 2), but wherein the response incorporates a query for a dynamic characteristic of the client (paragraphs 0025, 0031 and Fig. 2), receiving a second request for the first content incorporating a query result for the query (paragraphs 0033-0036, 0021-0023, and Fig. 2), the query result including the dynamic characteristic (paragraphs 0025, 0031 and Fig. 2), and providing the first content to the client in accord with the query result (paragraphs 0033-0036, 0021-0023, and Fig. 2); and wherein the client is operative to perform parsing the response to determine the query (paragraphs 0033-0036, 0021-0023, and Fig. 2), determining the query result, and providing the query result to the content provider in at least a second request for content (paragraphs 0033-0036, 0021-0023, and Fig. 2).

23. Regarding claim 23, Zmudzinski disclosed wherein the client and content provider utilize HTTP to exchange data in accord with the CC/PP protocol (paragraphs 0021-0023).

24. Regarding claim 27, Zmudzinski disclosed determine that the content is arranged in a hierarchical structure (paragraphs 0033-0036, 0021-0023, and Fig. 2); and determining if the content provider wants the query result to be automatically incorporate into a third requesting of second content from the content provider based on results of said determining (paragraphs 0033-0036, 0021-0023, and Fig. 2).

25. Regarding claim 28, Zmudzinski disclosed a machine-accessible media (paragraphs 0033-0036, 0021-0023); and a plurality of programming instructions stored on the media and configured to program a content provider to receive from a client a first request for first content and a characteristic profile (paragraphs 0033-0036, 0021-0023, and Fig. 2), the characteristic profile including characteristics of the client (paragraphs 0033-0036, 0021-0023, and Fig. 2); determine the client may be queried for dynamic characteristics not identified in the characteristic profile (paragraphs 0025, 0031 and Fig. 2), provide a first response to the first request of the client (paragraphs 0033-0036, 0021-0023, and Fig. 2), the first response lacking all of the requested first content (paragraphs 0025, 0031 and Fig. 2), but wherein the first response incorporates a query for a dynamic characteristic of the client (paragraphs 0025, 0031 and Fig. 2), receive a second request for the first content (paragraphs 0033-0036, 0021-0023, and Fig. 2), wherein the second request incorporates a query result for the query (paragraphs 0033-0036, 0021-0023, and Fig. 2), the query result including the dynamic

characteristic (paragraphs 0025, 0031 and Fig. 2), and provide the first content to the client in accord with the dynamic characteristic (paragraphs 0033-0036, 0021-0023, and Fig. 2).

26. Regarding claim 30, Zmudzinski disclosed wherein the first content is arranged in a hierarchical structure, and the method further comprises determining (paragraphs 0021-0023), by the client device, if the content provider wants the query result to be automatically incorporated into a third requesting of second content from the content provider that is lower in the hierarchical structure than the first content (paragraphs 0033-0036, 0021-0023, and Fig. 2).

***Claim Rejections - 35 USC § 103***

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. Claims 21 and 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zmudzinski in view of Hild et al (6,978,373), hereinafter referred to as Hild.

29. Regarding claims 21 and 29, Zmudzinski disclosed the invention as described above. However Zmudzinski does not explicitly teach issuing a set-cookie command to the client to associate at least the first content with a cookie, wherein the cookie indicates the query result will be cached for all content associated with the cookie. Hild teaches a system that can use a set-cookie command to the client to associate at least

the first content with a cookie, wherein the cookie indicates the query result will be cached for all content associated with the cookie (column 6, lines 52-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the cookie feature as taught by Hild in the method and system of Zmudzinski because both Hild and Zmudzinski are from the same field of endeavor of delivering networked content based on the CC/PP protocol and because the format of a cookie is another suitable format for storing a client's profile information (column 6, lines 58-61).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **BRADFORD F. FRITZ** whose telephone number is (571)272-3860. The examiner can normally be reached on 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharja can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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